

Robert Heintz (SBN 152277)  
LAW OFFICE OF ROBERT HEINTZ  
6121 Oak Avenue  
Carmichael, CA 95608  
Tel: 916.486.1147

Robin J. Smith (SBN 145899)  
R.J. SMITH LAW OFFICE  
P.O. Box 698  
Roseville, CA 95661  
Tel: 916.437.4301  
Fax: 916.437.4302  
rsmith@rjsmithlawoffice.com

Attorney for Plaintiffs  
NATHANIEL WEISKIRCHER  
and ANNETTE WEISKIRCHER

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATHANIEL WEISKIRCHER and  
ANNETTE WEISKIRCHER,

Plaintiffs,

vs.

AMERICAN AIRLINES, INC.,

Defendant.

No. 2:19-cv-2582-JAM-KJN

**JOINT STIPULATION TO  
CONTINUE TRIAL AND  
CERTAIN PRETRIAL  
DEADLINES**

The parties jointly stipulate to extend the trial date and certain pretrial deadlines as set forth below. This request is based on the following facts, to which the parties hereto stipulate and agree:

1. Plaintiffs filed this action in August 2019 in the Superior Court of California. Defendant removed the action to this Court in December 2019. Plaintiffs' original attorney became ill, and his illness caused a significant delay in discovery. Plaintiffs consented to the association of current counsel, and the parties got the case back on track. Trial was rescheduled to September 13, 2021. Trial was subsequently rescheduled four more times, with trial being most recently set for March 11, 2024. The

1 resetting shave been a result of delays caused by the above issue with counsel and also  
2 because of plaintiff Nathaniel Weiskircher's ongoing health needs, which are, in part, at  
3 issue in this lawsuit, and which is necessitating this stipulation for an additional  
4 continuance.

5 2. The parties have nonetheless been diligent in litigating and defending this  
6 suit, including through, for example, both of plaintiffs' deposition, depositions of four of  
7 Mr. Weiskircher's treating physicians, and the exchange of expert and rebuttal expert  
8 reports. Defendant also moved for plaintiff Annette Weiskircher to be dismissed, which  
9 this Court granted. Additionally, the parties have agreed to mediate this action on January  
10 17, 2024.

11 3. Because Mr. Weiskircher had hip surgery in December 2022 and shoulder  
12 surgery on February 9, 2023, the parties agreed it was necessary to postpone the experts'  
13 depositions given Mr. Weiskircher's then-anticipated surgeries and corresponding  
14 treatment. Specifically, Mr. Weiskircher's hip surgery required him to be bedridden for  
15 the first four weeks after his surgery, and he is still in recovery from that surgery. (As  
16 previously mentioned to the Court, Plaintiff has spina bifida and has relied on a  
17 wheelchair for almost thirty years, which complicates surgeries and increases recovery  
18 time.) Because Mr. Weiskircher would not be fully recovered by the January 2023 trial  
19 setting, the parties agreed to continue trial to August 2023 (D.E. #59) and to extend the  
20 discovery deadline to May 9, 2023 (D.E. # 61).

21 4. Because Mr. Weiskircher was still recovering from his February shoulder  
22 surgery, his doctor opined that Mr. Weiskircher would not be able to load-bear on  
23 the shoulder until June 1, 2023 at the earliest, and he relies on shoulder bearing to transfer  
24 to and from his wheelchair. Accordingly, his occupational and physical therapies had to  
25 progress slowly, which, in turn, extended the window of time that it would take to  
26 determine the degree to which the surgery was a success. This four-month recovery time  
27 (February to June) contributed to the parties' request to continue the discovery deadline  
28 and trial from August 2023 to March 2024.

1           5.     Mr. Weiskircher contends the incident underlying this action caused him to  
2 need the hip and shoulder surgeries. Defendant, however, disputes both liability and  
3 causation. Thus, because the need for the surgeries is at issue in this suit, the parties'  
4 experts must opine on the cause for and necessity of Mr. Weiskircher's surgeries and his  
5 post-surgery conditions, which were expected to be known towards the end of 2023, and  
6 Mr. Weiskircher may need to be deposed about these issues. Accordingly, the parties had  
7 to further postpone expert discovery in anticipation of potentially serving supplemental  
8 expert reports to address Mr. Weiskircher's recent surgeries and subsequent treatment,  
9 including the corresponding costs. For efficiency's sake, the parties agreed no experts  
10 should be deposed until at least the end of 2023, necessitating the extension of the  
11 discovery deadlines and trial setting.

12           6.     Then, in December 2023, Mr. Weiskircher was scheduled to have a  
13 necessary heart surgery, which he does not contend is related to the issues in this suit.  
14 Due to an infection he developed, his surgeon had to postpone the surgery until January  
15 23, 2024. According to his physicians, the surgery has a minimum three-month recovery  
16 period, during which Mr. Weiskircher will be bedridden and housebound. He will  
17 therefore not be available to attend trial until April 23, 2024 at the earliest.

18           7.     Under Rule 3.1332(c)(2), the unavailability of a party because of illness or  
19 other excusable circumstances is an affirmative showing of good cause requiring a  
20 continuance.

21           8.     Accordingly, good cause exists for the Court to extend trial to allow Mr.  
22 Weiskircher to recover from his required heart surgery and thereafter be present during  
23 trial, and in the interim, the parties will mediate and conduct expert depositions.  
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9. The parties therefore stipulate and agree to extend the following pretrial dates and continue trial as set forth below:

DATE	ACTION ITEM
March 1, 2024	Plaintiff's supplemental expert witness disclosures
March 22, 2024	Defendant's supplemental expert witness disclosures
May 10, 2024	Deadline to file joint mid-litigation statement
May 24, 2024	Deadline to complete all discovery
September __, 2024 at ____ a.m.	Pre-trial Conference
September 23, 2024 at 9:00 a.m.	Jury/bench trial

8. A proposed order reflecting the modified dates is filed concurrently herewith.

**IT IS SO STIPULATED.**

Dated: January 12, 2024

**R.J. SMITH LAW OFFICE**

By: /s/ Robin J. Smith

Robin J. Smith  
R.J. SMITH LAW OFFICE  
P.O. Box 698  
Roseville, California 95661  
Telephone: 916.437.4301

Robert Heintz  
robert-heintz@heintzlaw.net  
LAW OFFICE OF ROBERT  
HEINTZ  
6121 Oak Ave.  
Carmichael, California 95608  
Telephone: 916.486.1147  
*Attorneys for Plaintiffs*

**AKERMAN LLP**

By: /s/ Evelina Gentry

Evelina Gentry  
evelina.gentry@akerman.com  
601 West Fifth Street, Suite 300  
Los Angeles, California 90071  
Telephone: 213.688.9500

Elliot Strader *admitted pro hac vice*  
elliot.strader@akerman.com  
Xakema Henderson *admitted pro hac vice*  
xakema.henderson@akerman.com  
2001 Ross Avenue, Suite 3600  
Dallas, Texas 75201  
Telephone: 214.720.4300  
*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2024, a copy of the foregoing document was served on all counsel of record via the CM/ECF system.

Robin J. Smith (SBN 145899)  
R.J. SMITH LAW OFFICE  
P.O. Box 698  
Roseville, CA 95661  
Tel: 916.437.4301  
Fax: 916.437.4302  
rsmith@rjsmithlawoffice.com

Robert Heintz (SBN 152277)  
LAW OFFICE OF ROBERT HEINTZ  
6121 Oak Avenue  
Carmichael, CA 95608  
Tel: 916.486.1147

*Attorneys for Plaintiffs*

/s/ Evelina Gentry  
Evelina Gentry

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12 **UNITED STATES DISTRICT COURT**  
13 **EASTERN DISTRICT OF CALIFORNIA**  
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15 NATHANIEL WEISKIRCHER and  
16 ANNETTE WEISKIRCHER,

17 Plaintiffs,

18 v.

19 AMERICAN AIRLINES, INC.,

20 Defendant.  
21

Case No. 2:19-cv-2582-JAM-KJN

**ORDER GRANTING STIPULATION  
TO CONTINUE TRIAL AND  
CERTAIN PRETRIAL DEADLINES  
(ECF 76)**

22 Before the Court is the parties' Stipulation to Continue Trial and Certain Pretrial  
23 Deadlines ("Stipulation"). Good cause appearing, the Court, therefore, **GRANTS** the  
24 Stipulation and enters the following Order. **IT IS HEREBY ORDERED** that:

- 25 1. Trial is **CONTINUED** from March 11, 2024, at 9:00 a.m., to **July 29, 2024,**  
26 **at 9:00 a.m.**  
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2. The Scheduling Order in this matter (D.E. #63) and Minute Order (D.E. #75) are **MODIFIED** as follows:

DATE	ACTION ITEM
<b>March 1, 2024</b>	Plaintiff's supplemental expert witness disclosures
<b>March 22, 2024</b>	Defendant's supplemental expert witness disclosures
<b>May 10, 2024</b>	Deadline to file joint mid-litigation statement
<b>May 24, 2024</b>	Deadline to complete all discovery
<b>Friday, June 14, 2024 at 10:00 a.m.</b>	Final Pretrial Conference
<b>Monday, July 29, 2024 at 9:00 a.m.</b>	Jury/bench trial

3. Unless expressly modified herein, the parties shall otherwise comply with the Scheduling Order.

**IT IS SO ORDERED.**

Dated: January 16, 2024

/s/ John A. Mendez

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THE HONORABLE JOHN A. MENDEZ  
SENIOR UNITED STATES DISTRICT JUDGE